

## **Chapter 3.20 TRANSIENT OCCUPANCY TAX**

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### **3.20.010 Definitions.**

For purposes of this chapter, the following words and phrases shall have the following meanings:

"Hotel" means any space or structure or any portion of any space or structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, breakfast house, dormitory, public or private club, mobilehome or housetrailer at a fixed location, mobilehome or housetrailer or recreational vehicle park or other similar space or structure or portion thereof.

"Occupancy" means the use or possession or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

"Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

"Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying

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space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted period of time extending both prior and subsequent to the effective date of this chapter may be considered.

(Prior code § 3-6.02)

#### **3.20.020 Transient occupancy tax—Amount—Where payable.**

- A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city.
- B. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel.
- C. If, for any reason, the tax due is not paid to the operator of the hotel, the city council may require that such tax be paid directly to the city clerk.

(Prior code § 3-6.03)

#### **3.20.030 Transient occupancy tax—Persons exempt.**

No tax shall be imposed upon:

- A. Any person as to whom or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;
- B. Any federal or state officer or employee when on official business; and
- C. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
- D. No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the city clerk.

(Prior code § 3-6.04)

#### **3.20.040 Transient occupancy tax—Collection.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged and each transient shall receive a receipt for payment, when requested, from the operator.

(Prior code § 3-6.05)

#### **3.20.050 Transient occupancy registration certificate.**

- A. Within thirty (30) days after the effective date of this chapter or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register such hotel with the city clerk and obtain from him or her a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises.
- B. Such certificate shall, among other things, state the following:

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1. The name of the operator;
2. The address of the hotel;
3. The date upon which the certificate was issued;
4. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax ordinance by registering with the City Clerk of the City of Colfax for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the City Clerk. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit."

(Prior code § 3-6.06)

#### **3.20.060 Reports and remittances.**

Each operator shall, on or before the last day of the month following the close of each calendar quarter or at the close of any shorter reporting period which may be established by the city council, make a return to the city clerk on forms provided by him or her of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount or the tax collected shall be remitted to the city clerk. The city council, by resolution, may establish shorter reporting periods for any certificate holder if it deems it necessary in order to insure collection of the tax and it may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the city clerk.

(Prior code § 3-6.07)

#### **3.20.070 Failure to remit tax—Penalties.**

- A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of tax.
- B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.
- C. Fraud. If the city council determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.
- D. Finance Charge. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay a finance charge at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

(Prior code § 3-6.08)

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#### **3.20.080 Operator failure to collect and report tax—Determination of tax—Notice—Hearing.**

If any operator shall fail or refuse to collect such tax or to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the city clerk shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the city clerk shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, finance charge and penalties provided for by this chapter. In case such determination is made, the city clerk shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the city clerk for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, finance charge and penalties, if any, determined by the city clerk shall become final and conclusive and immediately due and payable. If such application is made, the city clerk shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in such notice why such amount specified therein should not be fixed for such tax, finance charge and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, finance charge and penalties should not be so fixed. After such hearing the city clerk shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, finance charge and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 3.20.090 of this chapter.

(Prior code § 3-6.09)

#### **3.20.090 Appeal.**

Any operator aggrieved by any decision of the city clerk with respect to the amount of such tax, finance charge and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city council shall fix a time and place for hearing such appeal and the city clerk shall give notice in writing to such operator at his or her last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the operator in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Prior code § 3-6.10)

#### **3.20.100 Records kept for three years.**

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city, which records the city clerk shall have the right to inspect at all reasonable times.

(Prior code § 3-6.11)

#### **3.20.110 Refunds.**

- A. Whenever the amount of any tax, finance charge or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may

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be refunded as provided in subsections B and C of this section; provided, a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the city clerk within three years of the date of payment. The claim shall be on forms furnished by the city clerk.

- B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the city clerk that the person from whom the tax has been collected was not a transient, was exempt from payment under Section 3.20.030 of this chapter or otherwise or erroneously paid the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the person by whom it was paid or credited to rent subsequently payable by the person to the operator.
- C. A person may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the person directly to the city clerk or when the person, having paid the tax to the operator, establishes to the satisfaction of the city clerk that the person has been unable to obtain a refund from the operator who collected the tax.
- D. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

(Prior code § 3-6.12)

#### **3.20.120 Action by city to collect tax.**

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

(Prior code § 3-6.13)